

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

JOHN RICHARD SMITH,
TDCJ NO. 02037971
Plaintiff,

v.

WARDEN ARMSTRONG et al.,
Defendants,

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Civil Action No. 6:17-cv-144

DEFENDANTS JOINT NOTICE OF REMOVAL

Defendants Warden Armstrong, TDCJ Health Services Center, and Dr. Douglas Green file this Joint notice of removal pursuant to 28 U.S.C. § 1446(a) on the basis of a federal question.

STATEMENT OF THE CASE

Plaintiff John Smith is incarcerated in the Texas Department of Criminal Justice (TDCJ), and currently housed at the Alfred Hughes Unit in Gatesville, Texas. He alleges that on April 4, 2014, he tore his Achilles tendon in his left leg.¹ Smith claims that he has not gotten the pain medication that he has requested.² Smith brought suit against Green, Warden Armstrong, and TDCJ Health Services Division.³ Smith's complaint is unclear as to whether he is suing Defendants in their individual or official capacities. Smith is suing for treatment, to be moved somewhere more suitable, and \$150,000 in damages.⁴

¹ DE 1.

² *Id.*

³ *Id.*

⁴ *Id.*

GROUND FOR REMOVAL

Defendants seek removal of this action to federal court based on federal question jurisdiction. This is an action in which the district court has original jurisdiction based on claims or rights arising under the Constitution, treaties or laws of the United States. 28 U.S.C. § 1331. A district court has removal jurisdiction in any case where it has original jurisdiction.⁵ A federal question exists “if there appears on the face of the complaint some substantial, disputed question of federal law.”⁶

This case is removed pursuant to 28 U.S.C. § 1441, on grounds that Plaintiff brought this civil action in state court against Defendants under 42 U.S.C. § 1983 alleging violations of his federal constitutional rights, including deliberate indifference to his medical care. Plaintiff seeks injunctive relief and monetary damages. Plaintiff sues Defendants in the 52nd District Court in Coryell County, Texas, Cause No. DC-16-45737. The Western District of Texas is the proper venue for removal because this case was originally filed in Coryell County, Texas.⁷

This notice is timely as Cause No. DC-16-45737 was served on Defendant Green on May 19, 2017. All Defendants agree with and join this Notice of Removal. Defendants will file an Answer or responsive pleading in accordance with the seven-day time limit of FED. R. CIV. P. 81(c). No motions are pending in the state court. A copy of this notice of removal will be filed in the 52nd District Court of Coryell, County. Defendants also advise the Court that all pleadings filed in state court are attached in compliance with 28 U.S.C. § 1446.

For these reasons, Defendants respectfully pray that this cause be removed to the United States District Court for the Western District of Texas, Waco Division, pursuant to 28 U.S.C. § 1441.

⁵ 28 U.S.C. § 1441(a); *Gutierrez v. Flores*, 543 F.3d 248, 251 (5th Cir. 2008).

⁶ *Carpenter v. Wichita Falls Indep. Sch. Dist.*, 44 F.3d 362, 366 (5th Cir. 1995).

⁷ 28 U.S.C. § 1446(a).

Respectfully submitted,

KEN PAXTON

Attorney General of Texas

JEFFREY C. MATEER

First Assistant Attorney General

BRANTLEY STARR

Deputy First Assistant Attorney General

JAMES E. DAVIS

Deputy Attorney General for Civil Litigation

LACEY E. MASE

Division Chief

Law Enforcement Defense Division

/s/ Ariel N. Wiley

ARIEL N. WILEY

Assistant Attorney General

Attorney-in-Charge

Law Enforcement Defense Division

State Bar No. 24093366

Ariel.Wiley@oag.texas.gov

Office of the Attorney General

P. O. Box 12548, Capitol Station

Austin, Texas 78711

Office (512) 463-2080 / Fax (512) 936-2109

ATTORNEYS FOR DEFENDANT GREEN

/s/ Kelsey L. Warren

KELSEY L. WARREN

Assistant Attorney General

Law Enforcement Defense Division

State Bar No. 24095736

Kelsey.Warren@oag.texas.gov

Office of the Attorney General

P.O. Box 12548

Austin, Texas 78711-2548

(512) 463-2080 / Fax (512) 936-2109

**ATTORNEYS FOR DEFENDANTS
ARMSTRONG AND TDCJ HEALTH
SERVICES**

NOTICE OF ELECTRONIC FILING

I, **ARIEL N. WILEY**, Assistant Attorney General of Texas, do hereby certify that I have electronically submitted for filing a true and correct copy of the above and foregoing, **Defendants' Joint Notice of Removal**, in accordance with the Electronic Case Files System of the Western District of Texas Waco Division on June 2, 2017.

/s/ Ariel N. Wiley

ARIEL N. WILEY

Assistant Attorney General

CERTIFICATE OF SERVICE

I, **ARIEL N. WILEY**, Assistant Attorney General of Texas, certify that a true and correct copy of the above and foregoing, **Defendants' Joint Notice of Removal**, has been served by placing it in United States mail, on June 2, 2017, addressed to:

John Richard Smith, No. 02037971

TDCJ – Alfred Hughes Unit

Rt. 2 Box 4400

Gatesville, TX 76597

Plaintiff Pro Se

/s/ Ariel N. Wiley

ARIEL N. WILEY

Assistant Attorney General